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IN THE

Supreme Court of the United States

October Term, 1963

No. 216

IN RE: ESTATE OF CORA HUBBARD WILLIAMS

RESPONDENTS' BRIEF SUR PETITION FOR WRIT OF CERTIORARI

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. When constitutional questions are raised by a Petition for Writ of Certiorari in a collateral matter which is presently the subject of separate litigation in the Federal Courts between the same parties, is this not reason for denying the grant of the Writ?

2. When there is no litigation pending in a State Court and a Petition is presented to its highest Appellate Court for Change of Venue, are there any constitutional deprivations involved in the denial of a Change of Venue?

3. Where petitioner in the Writ of Certiorari alleges as reasons for the granting of said Writ denial of due process on two prior Petitions in the State Courts, one of which she withdrew with prejudice and the other never filed an appeal to this Court, is petitioner doing by indirection that which is barred by lapse of time?

COUNTER-STATEMENT OF THE CASE

The petitioner, Cora Hubbard Williams, is an incompetent having been so adjudicated by the Orphans' Court of Allegheny County, Pennsylvania, on July 7, 1955. At the time of her adjudication of incompetency, Cora Hubbard Williams was an inmate at the Trenton State Hospital for the Insane, Trenton, New Jersey, where she had been placed on the petition of the Chief of Police of Mantoloking, New Jersey, and by Order of the Court because of her drunkenness, her assaults on two women and her obvious mental deterioration. This commitment to the Trenton State Hospital for the Insane was on May 31, 1955.

Mrs. Williams had assets in excess of Four Million Dollars and on June 20, 1955, her daughter, Cora Williams Murdoch, on the advice of counsel and the doctors attending her mother, petitioned the Orphans' Court of Allegheny County, Pennsylvania, which was the domicile of the incompetent, to appoint a guardian of her mother's estate.

The Orphans' Court of Allegheny County issued a citation on the incompetent directing that she be served with a notice of the pending hearing. This notice was served by Harrison T. Barrow, Esquire, an attorney, who testified at the hearing before the Orphans' Court of Allegheny County, held on July 5, 1955, that he personally served the incompetent with the said notice of hearing.

In addition, two psychiatrists who had been treating Mrs. Williams testified as to her incompetency. One of these doctors, to wit, Dr. Spradley, was present when notice of the hearing and the citation were served upon her by Harrison T. Barrow, Esquire. Throughout the entire proceeding the Orphans' Court of Allegheny County, Pennsylvania, was scrupulous in following the provisions of the Incompetents' Estates Act of 1951 (50 Purdon's Statutes Sec. 1631).

The Orphans' Court of Allegheny County, Pennsylvania, thereupon filed an Order, dated July 7, 1955, adjudi-

cating Cora Hubbard Williams an incompetent and appointing The Mellon National Bank and Trust Company and Cora Maltz Williams, her daughter, now Cora Williams Murdoch, as the Co-Guardians of her estate. The Order decreed that the sole custody of all of the assets of the incompetent shall be and remain in the possession of The Mellon National Bank and Trust Company, Pittsburgh, Pennsylvania.

In September of 1955, The Mellon National Bank and Trust Company, due to a conflict of interest, resigned as Co-Guardian and the incompetent, Cora Hubbard Williams, (petitioner herein), signed a Consent and Joinder to the appointment of a substituted corporate Co-Guardian (Commonwealth Trust Company of Pittsburgh). This Consent has never been attacked by the incompetent who again received notice that a substituted corporate Co-Guardian of her estate was to be apppointed.

The incompetent petitioner, from the time of her release from the Trenton State Hospital for the Insane in 1955, has spent time in the following mental institutions: Pennsylvania Institute, Philadelphia, Pennsylvania, Medical College of Virginia Hospital, Richmond, Virginia, and the Menninger Clinic, Topeka, Kansas. All of these institutions, from 1955 to 1959, have agreed on one fact and that is that Cora Hubbard Williams is an incompetent suffering from an arterial sclerosis of the brain, acute alcoholism, manic depression and a chronic brain syndrome (brain damage).

The record clearly shows that, prior to the adjudication of incompetency, Mrs. Williams had become the victim of designing persons. Among other matters, Mrs. Williams was defrauded into the sale of her majority interest in Hubbard and Company, a Pennsylvania Corporation. Subsequent to the adjudication of incompetency, the Co-Guardians instituted suit in this matter and recovered, for the incompetent's estate, the sum of Three Hundred Twenty-five Thousand ($325,000.00) Dollars. In addition to the

above matter, the incompetent had, in the year immediately preceding her adjudication, spent almost One Million ($1,000,000.00) Dollars in acquiring non-income producing assets which included, inter alia, 21 houses in the New Jersey resort area, which real estate has been liquidated by the Co-Guardians at a substantially lower price than that paid by the incompetent. The incompetent also purchased several pieces of jewelry at highly inflated prices which the Co-Guardians have been unable to liquidate. All of these transactions were a result of the incompetent having been the victim of designing persons. This course of erratic conduct was terminated with the adjudication of incompetency and the appointment of Co-Guardians of her estate.

From 1955 to date the Co-Guardians have filed two separate accounts with the Orphans' Court of Allegheny County, Pennsylvania, which, after due notice, have been audited and approved by the said Court. In addition, a Guardian ad litem was appointed by the Orphans' Court of Allegheny County to protect the interests of the incompetent and a report of the Guardian ad litem, along with the second account, was approved by the said Court in September of 1958.

Since April of 1959, the incompetent has hired numerous reputable attorneys who have represented her for short periods of time. One attorney, in 1961, filed a Petition for the Adjudication of Competency. This Petition was withdrawn by the incompetent and her lawyers discharged after the incompetent had agreed to undergo psychiatric re-examination and then refused to do so.

Subsequent to the dismissal of her counsel, who had been President of the Allegheny County Bar Association, the incompetent secured the services of her present counsel who has placated the whims of the incompetent by harassing the Co-Guardians by instituting endless litigation in every State Court of the Commonwealth of Pennsylvania and the Federal Courts as hereinafter set forth. With the entry of each new suit, the incompetent's desire for publi-

city is satiated by her counsel securing newspaper coverage, attacking her family, the Corporate Co-Guardian and the judges and lawyers connected with the case.

On June 19, 1962, the incompetent's present counsel filed a Petition in the Orphans' Court of Allegheny County alleging that the original appointment was procured by fraud and without due process of law. This Petition was dismissed, on June 29, 1962, on its merits and for the further reason that it was supported by an affidavit which was removed from another Petition by the incompetent's counsel and attached to the Petition which the said counsel admitted was neither seen nor read by the incompetent but which he submitted to the Orphans' Court for adjudication.

Thereafter on July 5, 1962, the incompetent filed Exceptions to the Opinion and Decree of the Orphans' Court of Allegheny County dated June 29, 1962, which had dismissed her Petition. On October 25, 1962, the incompetent, by her present counsel, withdrew WITH PREJUDICE, the said Exceptions to the Adjudication to which she now complains.

The incompetent then filed in the Supreme Court of Pennsylvania a Petition to declare the original appointment void on the grounds of fraud and lack of due process. This Petition was dismissed on August 29, 1962. A subsequent motion for Reconsideration was also dismissed by the Supreme Court of Pennsylvania on October 4, 1962. The petitioner incompetent has never filed any appeals or Petitions for Writs of Certiorari to the Decrees of the Supreme Court of Pennsylvania or of the Orphans' Court of Allegheny County, Pennsylvania.

Thereafter on October 19, 1962, the incompetent filed a Complaint in the United States District Court for the Western District of Pennsylvania at Civil Action No. 62-838, alleging all of the same facts that she had previously alleged in the Orphans' Court of Allegheny County, Pennsylvania, and in the Petition to the Supreme Court of Pennsylvania including a denial of due process and other constitutional

rights. This Complaint was dismissed and is presently pending before the Circuit Court of Appeals for the Third Circuit.

The incompetent, through her present counsel, thereafter, again attempted to collaterally attack the adjudication of incompetency through a suit filed in the Court of Common Pleas of Allegheny County, Pennsylvania. This suit was also dismissed.

The incompetent's present counsel has also, in his own name, instituted three (3) suits in the County Court of Allegheny County, Pennsylvania, against the Co-Guardians of Mrs. Williams' Estate for contracts entered into by counsel purportedly on behalf of Mrs. Williams which the Co-Guardians refused to honor. This was another attempt by counsel to collaterally attack the guardianship.

The incompetent petitioner then filed a Petition in the Supreme Court of Pennsylvania for Change of Venue notwithstanding the fact there was no action pending in the Orphans' Court of Allegheny County. The respondent Co-Guardians filed an Answer to the said Petition. The Petition for Change of Venue was dismissed and the incompetent filed a Motion to Strike Off the Answer of the Co-Guardians as well as a Petition for Reargument. The Court denied the Motion to Strike Off the Answer of the Co-Guardians and the Petition for Reargument and permitted its Order of March 21 1963, dismissing the Petition for Change of Venue, to stand. The incompetent then filed this Petition for Writ of Certiorari complaining not only about the action of the Supreme Court of Pennsylvania in denying her Change of Venue Petition but also all of the collateral matters alleged and adjudicated in the prior actions which counsel had filed and failed or refused to appeal to this Court.

At no time has the incompetent, through her present counsel, attempted to follow the provisions of the Incompetents' Estates Act of 1951 by filing a Petition for Adjudica-

tion of Competency, although her counsel has never questioned the constitutionality of this Act. This is uncomprehendable in view of the fact that the Orphans' Court of Allegheny County, Pennsylvania, has stated, in the Opinion of the President Judge, that it will entertain at anytime a Petition to have Mrs. Williams adjudicated competent.

[All the foregoing facts were pleaded either in the Answer to Petition for Change of Venue or in the Motion to Quash filed by the respondents in the Court below and not printed or certified by the Petitioner herein, but certified by the Supreme Court of Pennsylvania to this Court.]

ARGUMENT

1. LIS PENDENS—COMPLAINT IN FEDERAL DISTRICT COURT ON APPEAL TO THE THIRD CIRCUIT.

The petitioner incompetent has filed in the Federal District Court for the Western District a suit alleging a denial of due process in the appointment of a guardianship of her estate, that the initial appointment was procured by fraud, that the Orphans' Court of Allegheny County was biased and prejudiced against her cause and that the Supreme Court of Pennsylvania is also biased and prejudiced against her cause. The defendants in this action are the Co-Guardians of the estate of the incompetent. She seeks by this suit to set aside the original appointment, to surcharge the Co-Guardians for monies which they have spent pursuant to Court order and an accounting from said Co-Guardians plus damages. This action was dismissed by the Federal District Court for the Western District in an Opinion by Judge Sorg on February 14, 1963, (Civil Action No. 62-533). The incompetent appealed said Order to the Circuit Court of Appeals for the Third Circuit which appeal is now pending.

All of the constitutional issues raised by the incompetent petitioner in the present Petition for Writ of Certiorari are involved in and have been adjudicated in this Federal Action now pending. This present Petition for Writ of Certiorari applies to a Petition for Change of Venue filed in the Supreme Court of Pennsylvania. Respondents filed an Answer denying all of the allegations set forth in said Petition which incompetent's counsel refused to print on appeal plus a Motion to Quash which also was not printed. Both of these documents as well as the entire record have been certified to this Honorable Court. One of the reasons stated in the Motion to Quash as well as the Answer was this pending litigation concerning the constitutional questions raised by petitioner. It is the belief and opinion of the Co-Guardians that justice cannot be served by a review of the constitutional question on a denial of a Change of Venue when the very same issues are now being litigated in the Federal Courts. It is interesting to note that counsel on his argument in the Federal District Court specifically stated that he was not attacking the constitutionality of the Incompetents' Estates Act of 1951 (50 Purdon's Statutes 1631[a] which provides, inter alia, the type of notice that alleged incompetents are to receive.

2. No Litigation Pending in the Orphans' Court of Allegheny County.

The incompetent in the instant case filed a Petition with the Supreme Court of Pennsylvania asking for a Change of Venue and alleging facts that were denied by the Co-Guardians. At the time she presented this Petition there was no litigation then being considered by the Orphans' Court of Allegheny County nor were there any Petitions filed by the incompetent then pending or now pending before said Court. It is submitted, therefore, that the Supreme Court of Pennsylvania acting on the Answer and the Motion to Quash filed by the Co-Guardians did not find

sufficient reasons to grant the Change of Venue for the obvious reason that there was nothing before the Orphans' Court of Allegheny County to Change the Venue.

The incompetent's counsel withdrew *with prejudice* all of his Exceptions to the Order of the Orphans' Court of Allegheny County dated June 29, 1962, which contained all of the constitutional questions which he now complains again. This was the only and last Petition filed by the present incompetent's counsel in the Orphans' Court of Allegheny County.

3. THE INCOMPETENT PETITIONER FILED IN JUNE OF 1962 A PETITION IN THE ORPHANS' COURT OF ALLEGHENY COUNTY ALLEGING THAT THE ORIGINAL APPOINTMENT OF THE GUARDIANS WAS A DENIAL OF DUE PROCESS AND OTHER CONSTITUTIONAL RIGHTS OF THE INCOMPETENT AS WELL AS THE ALLEGATIONS THAT THE APPOINTMENT WAS PROCURED BY FRAUD.

This Petition was served upon the Co-Guardians as Respondents. The prayer of the Petition sought a surcharge and an accounting by the Co-Guardians and the vacating of the original Order of Incompetency. On June 29, 1962, the Court dismissed the Petition on its merits. The incompetent immediately filed Exceptions to said Decree of the Orphans' Court and then for some unexplained reason present counsel withdrew said Exceptions *With Prejudice* on October 25, 1962. In this Petition she raised all of the constitutional questions she now seeks to have reviewed.

Thereafter the incompetent, by her present counsel, filed in the Supreme Court of Pennsylvania an original Petition alleging the identical facts set forth in its Petition presented to the Orphans' Court of Allegheny County in June of 1962 which complained of the same constitutional deprivations and added the bias and prejudice of the judges of the Orphans' Court of Allegheny County. This Petition was served on the respondents, as the incompetent was seek-

ing the same relief, to wit, the surcharging of the Co-Guardians and the filing of an account. The Co-Guardians filed a Motion to Quash which Motion was granted and the Petition was dismissed on August 29, 1962. The incompetent and her present counsel never filed any direct appeals to the Supreme Court of the United States or petitioned for Writ of Certiorari. It is obvious, therefore, that the present Petition for Writ of Certiorari has assigned as reasons for the allowance of the Writ the denial of these same previous two Petitions which never had been appealed to this Court.

It is the belief of the Co-Guardians that in the present Petition for Change of Venue, which is the subject of this Petition for Writ of Certiorari, there are no federal questions of substance involved and it is obvious from a reading of the Answer filed by the Co-Guardians that the constitutional rights of the incompetent had been scrupulously followed throughout all of the proceedings. What incompetent's counsel is attempting to do indirectly, by this Writ, is to secure a review by this Court of two Petitions that he failed to appeal and in fact withdrew all of his Exceptions *with prejudice.*

CONCLUSION

The Co-Guardians of the estate are arms of the Orphans' Court of Allegheny County and as such are subject to its jurisdiction and Orders. The Co-Guardians have been made defendants or respondents in six suits seeking surcharges against them and in which there have been allegations of wrongdoings, fraud, conspiracy and other invectives invented by counsel. It is the duty of the Co-Guardians to prevent incompetent's estate from being depleted by designing persons. It is quite clear that attorneys are just as capable of being designing persons as other laymen. It is the belief of the Co-Guardians that the cause of justice will be served by the orderly process of the appeal

now pending in the Federal Courts concerning the same issues raised by this Writ. It is respectfully submitted that the instant Petition for Writ of Certiorari be dismissed.

Respectfully submitted.

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